

In the case of Zappia v. Italy (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B (2), as a Chamber composed of the following judges:

Mr R. Bernhardt, President,
Mr F. Matscher,
Mr C. Russo,
Mr A.N. Loizou,
Mr J.M. Morenilla,
Mr M.A. Lopes Rocha,
Mr L. Wildhaber,
Mr U. Lohmus,
Mr E. Levits,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 29 March and 29 August 1996,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

1. The case is numbered 85/1995/591/677. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 18 September 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 24295/94) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by two Italian nationals, Mr Giuseppe Zappia and his wife Giuseppa, née Vitalone, on 15 May 1993. The applicants, who were designated before the Commission by the initials G.Z. and G.V., subsequently consented to the disclosure of their identities.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 of the Convention (art. 6-1).

2. In response to the enquiry made in accordance with Rule 35 para. 3 (d) of Rules of Court B, the applicants stated that they did not wish to take part in the proceedings.

3. On 29 September 1995 the President of the Court decided that, in accordance with Rule 21 para. 7 and in the interests of the proper administration of justice, this case and the case of Di Pede v. Italy (1) should be heard by the same Chamber. The Chamber to be

constituted for that purpose included ex officio Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On the same day, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr B. Walsh, Mr R. Macdonald, Mr A.N. Loizou, Mr J.M. Morenilla, Mr M.A. Lopes Rocha, Mr L. Wildhaber and Mr E. Levits (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr U. Lohmus and Mr F. Matscher, substitute judges, replaced Mr Macdonald and Mr Walsh, who were unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

1. 83/1995/589/675.

4. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Italian Government ("the Government") and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Government filed their memorial on 17 February 1996. The Registrar had received the applicants' observations on 20 and 26 October 1995 and their claims for just satisfaction on 6 February 1996.

5. On 21 February 1996 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 28 March 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. Raimondi, magistrato, on secondment
to the Diplomatic Legal Service,
Ministry of Foreign Affairs, co-Agent;

(b) for the Commission

Mr B. Conforti, Delegate.

The Court heard addresses by the above-mentioned representatives.

AS TO THE FACTS

I. Circumstances of the case

A. The proceedings on the merits

7. On 27 July 1963 the applicants brought proceedings against Mr B. in the Reggio di Calabria District Court seeking damages for breach of a contract of sale relating to a flat under construction.

In a provisionally enforceable judgment of 5 July 1968, deposited in the registry on 21 September 1968, the District Court assessed the damage at 5 million Italian lire (ITL) and confirmed the charging order which the applicants had been granted on 19 June 1964. This judgment was upheld by the Reggio di Calabria Court of Appeal on 7 June 1969. In a judgment of 12 March 1973, deposited in the registry on 16 July of the same year, the Court of Cassation dismissed an appeal on points of law by Mr B.

B. The enforcement proceedings

8. On 28 November 1969 Mr and Mrs Zappia served Mr B. with a notice to comply, but this produced no effect; a second notice, served on 21 July 1977, was no more successful. Accordingly, on 5 December 1977, they applied to the judge responsible for enforcement proceedings to have the property covered by the charging order (see paragraph 7 above) sold so that they could be paid the sum due together with interest and the costs of the enforcement proceedings.

9. On 9 May 1980 the judge set down the first hearing for 10 December 1980, but it did not take place until 11 March 1981 because he had been transferred. Of the next eight hearings (from 13 May 1981 to 24 November 1982) two were adjourned at the request of both parties, one without a reason being given, one at the defendant's request, two because the defendant's lawyer was absent, one because the parties had failed to appear and the last by the court of its own motion. On 23 March 1983 another creditor intervened in the proceedings. On 23 May 1984, after three further adjournments, the applicants asked for the property covered by the charging order to be valued. On 27 March 1985, after an adjournment ordered by the court of its own motion, the judge appointed an expert, who was sworn in on 25 September 1985. The hearings listed for 26 February and 25 June 1986 had to be adjourned, as the expert had not filed his report within the sixty days he had been given. The hearing set down for 26 November 1986 could not take place because the judge had been transferred.

10. On 28 December 1988 the applicants asked for a date to be fixed for the sale. On 9 January 1989 the judge to whom the case had now been assigned, noting that the property concerned was subject to other charging orders, ordered the registry to add all the documents concerning these orders to the file (Article 561 of the Code of Civil Procedure). As the registry had failed to comply with this instruction, the hearings listed for 24 May 1989, 18 December 1989, 3 June 1991 and 4 May 1992 had to be adjourned. The hearing set down for 1 October 1991 had also been adjourned to enable the parties to examine the expert's report.

On 5 October 1992, noting that the registry had at last complied with the order of 9 January 1989, the applicants' lawyer asked for a date to be fixed for the sale. Two hearings later, on 31 December 1992, the judge ordered the same expert to revalue the property subject to the charging order, the creditors to inform another creditor of the existence of the charging order and the registry to take the necessary steps for public notification of the sale of the property. He then directed the parties to appear at a hearing on 5 July 1993. As the registry had not served this order on the parties, the hearing in question was adjourned, first until 27 September 1993 and then, for the same reason, until 7 March 1994. The hearing listed for 7 November 1994 was adjourned because the registry staff were unable to find the case file. The hearing scheduled for 5 December 1994 was adjourned until 5 June 1995 because the expert's supplementary report had not yet been filed. The hearing listed for 5 June 1995 was adjourned by the court of its own motion because the judge had been transferred.

11. According to a certificate issued by the Reggio di Calabria District Court on 26 January 1996, submitted to the Court by the applicants on 6 February, the expert has still not submitted his report.

II. Relevant domestic law

12. In its report of 6 July 1995 the Commission gives a brief summary of Italian legislation governing enforcement proceedings. In particular, the Code of Civil Procedure provides:

Article 474

"Enforcement can be effected only where there is a valid authority to execute in relation to an obligation which is certain, the quantum of which has been fixed and which has fallen due.

The following shall constitute valid authority to execute:

(1) Judgments and measures to which the law expressly accords executory effect;

..."

Article 479

"Save where the law provides otherwise, enforcement must be preceded by service of the authority to execute and the notice to comply ..."

Article 567

"Where the period [ten days] laid down in Article 501 has expired, the creditor who applied for the charging order and any creditor who has joined the proceedings and is in possession of authority to execute may apply for the property charged to be sold ..."

Article 598

"If the proposal [for dividing the proceeds of the sale of the property] is approved, or if an agreement is reached between all the parties, this shall be formally minuted in the case file and the judge responsible for the enforcement proceedings shall order that the various shares be paid out; otherwise [the judge shall prepare the case for trial]."

PROCEEDINGS BEFORE THE COMMISSION

13. Mr and Mrs Zappia applied to the Commission on 15 May 1993. Relying on Article 6 para. 1 of the Convention (art. 6-1), they complained of the length of civil proceedings followed by enforcement proceedings.

14. The Commission declared the application (no. 24295/94) admissible on 2 March 1995. In its report of 6 July 1995 (Article 31) (art. 31), it expressed the opinion by twenty-six votes to three that there had been a violation of Article 6 (art. 6). The full text of the Commission's opinion and of the four separate opinions contained in the report is reproduced as an annex to this judgment (1).

Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-IV), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 OF THE CONVENTION (art. 6-1)

15. The applicants complained of the length of civil proceedings followed by enforcement proceedings and relied on Article 6 para. 1 of

the Convention (art. 6-1), which provides:

"In the determination of his civil rights and obligations
..., everyone is entitled to a ... hearing within a
reasonable time by [a] ... tribunal ..."

A. The Government's preliminary objection

16. Without contesting the applicability of Article 6 (art. 6) to the enforcement proceedings, the Government argued, as they had before the Commission, that in so far as the application concerned the length of the proceedings on the merits, it was out of time. For the purposes of Article 26 in fine of the Convention (art. 26), the judgment of 12 March 1973 (see paragraph 7 above) was the final decision. The enforcement proceedings could not therefore be regarded as a second stage of the proceedings complained of; on the contrary, they were new, separate proceedings. The "natural extension" argument put forward by the Commission disregarded the specific features of the Italian legal system. There were three aspects which distinguished the two types of proceedings from each other. Firstly, the authority to execute, without which no enforcement proceedings could take place, was not necessarily derived from proceedings on the merits of a claim, but could be derived from another source, as in the case of debts (*debiti pecuniari*). Secondly, the parties to enforcement proceedings might not be the same as the parties to the proceedings on the merits. Lastly, the two stages were conducted concurrently where, for example, a judicial decision was provisionally enforceable.

It followed that the six-month period referred to in Article 26 (art. 26) in fine had begun with the deposit in the registry, on 16 July 1973, of the judgment in question, and the applicants had not complied with the six months' rule since they had lodged their application on 15 May 1993.

In any event, the proceedings on the merits fell outside the Court's jurisdiction *ratione temporis*, since the Italian declaration accepting the right of individual petition (Article 25 of the Convention) (art. 25) had come into force on 1 August 1973.

17. The Delegate of the Commission argued that the two sets of proceedings complained of were indissociable and that any delay imputable to the applicants between the end of the proceedings on the merits and the enforcement proceedings had to be assessed in the light of their conduct during the proceedings.

18. The Court considers that it does not have to express a view on the difference of opinion as to whether under Italian law enforcement proceedings are autonomous; it is with reference to the Convention and not on the basis of national law that the Court must decide whether, and if so when, the right asserted by Mr and Mrs Zappia on 27 July 1963 (see paragraph 7 above) actually became effective. It is that moment which constitutes determination of a civil right, and therefore a final decision within the meaning of Article 26 (art. 26) (see the *Silva Pontes v. Portugal* judgment of 23 March 1994, Series A no. 286-A, p. 13, para. 29).

19. In the present case, on 12 March 1973, the Court of Cassation upheld, as the Court of Appeal had already done, the Reggio di Calabria District Court's judgment of 5 July 1968 in the applicants' favour (see paragraph 7 above). On 21 July 1977 the applicants served Mr B. with a notice to comply; then, on 5 December of the same year, they applied to the judge responsible for enforcement proceedings seeking payment of the sum due together with interest and the costs of the enforcement proceedings.

According to the information supplied to the Court by the applicants on 6 February 1996, by 26 January 1996 the expert had still

not filed the supplementary report (see paragraphs 7-11 above).

Faced with the inertia of the judge responsible for enforcement proceedings, the applicants lodged an application with the European Commission of Human Rights on 15 May 1993.

20. The Court considers that the enforcement proceedings must be regarded as the second stage of the proceedings which began on 27 July 1963 (see, among other authorities, *mutatis mutandis*, the previously cited *Silva Pontes* judgment, p. 14, para. 33) - which in this case were not covered by the Italian declaration recognising the right of individual petition (Article 25) (art. 25); it emphasises that, at the date of adoption of the present judgment, it has not been informed of any final decision within the meaning of Article 26 in fine of the Convention (art. 26).

The objection must accordingly be dismissed.

B. Merits of the complaint

21. It remains to be decided whether a reasonable time was exceeded. The Commission and the applicants maintained that it was. The Government disagreed.

22. The Court observes that the period to be taken into consideration did not begin on 27 July 1963, when proceedings were brought against Mr B. in the Reggio di Calabria District Court, but only on 1 August 1973 when the Italian declaration under Article 25 of the Convention (art. 25) took effect (see paragraph 20 above). In order to determine the reasonableness of the length of time which has elapsed since that date, regard must be had however to the state of the case at the time (see, among other authorities, the *Billi v. Italy* judgment of 26 February 1993, Series A no. 257-G, p. 89, para. 16).

The relevant period has not yet ended, as the enforcement proceedings are still pending.

23. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *mutatis mutandis*, the *Ausiello v. Italy* judgment of 21 May 1996, Reports of Judgments and Decisions 1996-III, p. 722, para. 19).

24. The Government pleaded the conduct of the applicants, who had waited until July 1977 before commencing the enforcement proceedings and had subsequently again requested adjournments.

25. Like the Delegate of the Commission, the Court notes, firstly, that the applicants served Mr B. with a notice to comply only on 21 July 1977 (four years after the end of the proceedings on the merits) and applied to the judge responsible for enforcement proceedings on 5 December 1977 (see paragraph 8 above). Secondly, it observes that the applicants were responsible for three adjournments, two because they requested them and a third because they did not object to the defendant's request. However, their conduct alone does not explain the length of the proceedings complained of.

No fewer than thirteen hearings were adjourned, sometimes on account of a judge's transfer, sometimes by the court of its own motion and sometimes because the registry was not functioning correctly (see paragraphs 9 and 10 above). In addition, the expert's supplementary report, which was ordered on 31 December 1992 has still not been filed at the registry. In that connection, the Court points out that an expert works in the context of judicial proceedings

supervised by a judge, who remains responsible for the preparation and the speedy conduct of the trial (see, among other authorities, the *Scopelliti v. Italy* judgment of 23 November 1993, Series A no. 278, p. 9, para. 23).

26. Consequently, a period of more than twenty-three years for proceedings which are still pending and are of no particular complexity cannot be regarded as reasonable.

There has therefore been a breach of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

27. Under Article 50 of the Convention (art. 50),

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage and costs and expenses

28. The applicants claimed ITL 107,976,000 for pecuniary and non-pecuniary damage, reimbursement of their costs and lawyers' fees for the proceedings before the Italian courts and ITL 4,000,000 for the costs they had incurred before the Convention institutions.

29. The Government submitted that these claims should be dismissed. With regard to the alleged pecuniary damage, the figure advanced corresponded to the amount of the debt apparently owed by Mr B. There was no valid claim for non-pecuniary damage. The costs would in any case have been incurred by the applicants irrespective of the length of the proceedings they complained of.

30. The Delegate of the Commission left the matter to the discretion of the Court, which, making an assessment on an equitable basis, and having regard to the information in its possession and its case-law on the question, decides to award Mr and Mrs Zappia ITL 24,000,000 for damage and costs and expenses.

B. Default interest

31. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 10% per annum.

FOR THESE REASONS, THE COURT

1. Dismisses by eight votes to one the Government's preliminary objection;
2. Holds by eight votes to one that there has been a breach of Article 6 para. 1 of the Convention (art. 6-1);
3. Holds by eight votes to one that the respondent State is to pay the applicants, within three months, 24,000,000 (twenty-four million) Italian lire for damage, costs and expenses, and that simple interest at an annual rate of 10% shall be payable from the expiry of the above-mentioned three months until settlement;
4. Dismisses unanimously the remainder of the claim for just

satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 September 1996.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 55 para. 2 of Rules of Court B, the dissenting opinion of Mr Morenilla is annexed to this judgment.

Initialled: R. B.

Initialled: H. P.

DISSENTING OPINION OF JUDGE MORENILLA

(Translation)

1. For the reasons I have set out in my dissenting opinions in the *Silva Pontes v. Portugal* (1) and *Di Pede v. Italy* (2) cases, I consider that the Government's objection must be allowed, since the proceedings on the merits ended in 1973 with a final judgment which constitutes the relevant final decision for the purposes of the six-month limit under Article 26 of the Convention (art. 26). When Mr and Mrs Zappia applied to the Commission in 1993 (twenty years later!) the Commission did not have jurisdiction to deal with the complaint relating to the length of the declaratory proceedings.

1. Judgment of 23 March 1994, Series A no. 286-A.

2. Judgment of 26 September 1996, Reports of Judgments and Decisions 1996-IV.

2. As regards the complaint concerning the excessive length of the enforcement proceedings complained of by the applicants, I repeat that, as these proceedings are separate from the proceedings on the merits, even though they began on 5 December 1977 the Strasbourg institutions have jurisdiction to deal with the complaint under Article 6 of the Convention (art. 6) because they are still pending.

3. Given that I consider the Court to have jurisdiction to rule on that complaint, limited - I repeat - to the enforcement proceedings, I agree with the reasoning and conclusion of the majority to the effect that there was a violation of Article 6 para. 1 of the Convention (art. 6-1) in the case. Unlike the position in the above-mentioned *Di Pede* case, which concerned enforcement of an obligation to perform a specific act, governed by Articles 612 and 613 of the Italian Code of Civil Procedure, the present case concerns proceedings to enforce payment of a sum specified in the final decision on the merits, plus interest and the costs of the enforcement proceedings. Under this procedure the same Italian Code of Civil Procedure (see paragraph 12 of the judgment) not only requires the plaintiff to institute proceedings - so that it is for a party to take the initiative - but also places the courts under an obligation to rule on the judgment creditor's claims. In the present case the judge dealing with the enforcement proceedings has still not reached any decision (see paragraph 25 of the judgment).

4. In my opinion, therefore, the applicants' contribution to the delays they complained of in the enforcement proceedings does not

justify the judge's inactivity, or indeed negligence, as regards bringing the proceedings to an end (see paragraph 25 of the judgment). For that reason, I consider that the length of the enforcement proceedings has exceeded the reasonable time required by Article 6 para. 1 (art. 6-1) and I voted against the award of any sum whatsoever to the applicants for damages under Article 50 (art. 50).